

DECISION



18534
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-201634

DATE: June 18, 1981

MATTER OF: Captain James A. Zimmerman, USNR, Retired

- DIGEST:**
1. Navy officer retired under 10 U.S.C. 6323 may receive credit in the multiplier used in computing his retired pay for the full 57 inactive service points he earned in a year in which he also served on active duty. While on active duty he was in an active status, not an inactive status, and regulations governing the maximum number of points which may be earned require prorating of maximum allowable only on the basis of excluding periods of inactive status.
 2. Discrepancies in a Navy officer's service records which make it unclear as to whether he is entitled to retirement credit for 11 days' additional active service is a matter for consideration by the Chief of Naval Personnel or the Board for the Correction of Naval Records.

Captain James A. Zimmerman, USNR, Retired, requests review of our Claims Group's settlement, dated September 23, 1980, which disallowed his claim for additional retired pay.

By memorandum of May 20, 1975, Captain Zimmerman was informed by the Office of the Chief of Naval Personnel that on November 1, 1976, he would have completed 27 years and 7 months (28 years) of service creditable for retired pay multiplier purposes. On the basis of this statement, he concluded that he would complete 28 years and 6 months (29 years) of creditable service on October 1, 1977. Therefore, he selected September 30, 1977, as his retirement date and was retired on October 1, 1977, pursuant to the provisions of 10 U.S.C. 6323 (1976).

After receiving his first retirement check, the amount of which was less than he anticipated, Captain Zimmerman consulted the Navy Finance Center. He was informed that his service creditable for retirement multiplier purposes, computed in accordance with 10 U.S.C. 1405, pursuant to 10 U.S.C. 6323, totaled 28 years, 4 months, and 14 days,

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which under section 1405 is counted as only 28 years' service since it did not equal at least 28 years and 6 months.

Captain Zimmerman claims that his total creditable service is 28 years, 6 months, and 9 days, which under 10 U.S.C. 1405 would be counted as 29 years. In reaching this result, he initially points out the following discrepancies in the computation of the Navy Finance Center:

- (1) the exclusion of credit for active service on January 4, 1960, and

- (2) the exclusion of credit for active service from January 7 through January 17, 1961.

With regard to these claims of error, we note that the service records, specifically the computation of Retirement Eligibility and Credit and the NAVPERS Computation of Service for Retirement (Worksheet) are in conflict with respect to these dates. However, even if Captain Zimmerman is given credit for those additional 11 days' service, that alone would not be enough additional credit to increase his service to 28 years and 6 months or more which could be counted as 29 years. If he wishes to have the record clarified in that regard, he should submit the matter to the Chief of Naval Personnel. If he is not satisfied with that officer's determination he may request a correction of his records by the Board for the Correction of Naval Records which, pursuant to 10 U.S.C. 1552, has the authority to correct errors in service records.

Captain Zimmerman also claims, on the basis of our decision in 34 Comp. Gen. 520 (1955), that he was not given sufficient credit for inactive service as a member of the Naval Reserve during his anniversary year ending June 30, 1961. During this year the record shows that he earned 57 inactive duty points each one of which is to be counted as a day's service credit. Captain Zimmerman claims credit for the full 57 points credit for this year; however, on the basis that he was in an active duty status for about 8 months during this year, the Navy has prorated the point credit for this year giving him credit for only 17 points. If he is given credit for the other

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40 points and the conflicting statements of active service in his service records mentioned above are resolved in his favor, he will have over 28 years and 6 months of service credit which will be counted as 29 years.

Captain Zimmerman was retired pursuant to 10 U.S.C. 6323 under which retired pay is based on 2-1/2 percent of his basic pay multiplied by the number of years of service that may be credited to him under 10 U.S.C. 1405. As is relevant here, section 1405 provides that the member's years of service are computed by adding--

"(1) his years of active service;

* * * * *

"(4) the years of service, not included in clause (1), (2), or (3), with which he would be entitled to be credited under section 1333 of this title, if he were entitled to retired pay under section 1331 of this title."

Except for the two disputed periods mentioned earlier, Captain Zimmerman has been given credit for his active service. As to inactive service credit, under the provisions of 10 U.S.C. 1333(3), a member of the Reserve is entitled to 1 day for each point credited to him under clause (B) or (C) of 10 U.S.C. 1332(a)(2). Clause (B) of 10 U.S.C. 1332(a)(2) provides for crediting one point for each attendance at a drill or period of equivalent training during a year, and clause (C) provides for the inclusion of 15 points per year for membership in a Reserve component of an Armed Force. As is indicated above, in Captain Zimmerman's June 30, 1961 anniversary year he earned a total of 57 such points which the Navy credited only on a partial (prorated) basis.

The Navy is apparently applying the regulations found in article 3860520 of the Bureau of Naval Personnel Manual (BUPERSMAN) to require prorating of the service concerned. Under paragraph 4a of that article officers transferred to the Inactive Status List during an anniversary year are to have their retirement points computed on a prorated

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basis. This regulation appears to be based on 10 U.S.C. 1334(a) which provides that service in an inactive status may not be counted in the computations under 10 U.S.C. 1332 and 1333.

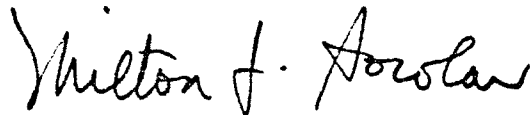
While "inactive status" is not specifically defined in the law, "active status" is defined in 10 U.S.C. 101(25) as:

"* * * the status of a reserve commissioned officer, other than a commissioned warrant officer, who is not in the inactive Army National Guard or inactive Air National Guard, on an inactive status list, or in the Retired Reserve."

See also 10 U.S.C. 1335 which describes the inactive status list.

Rather than being in an inactive status during the period excluded by the prorating, Captain Zimmerman was a Reserve officer on active duty and, thus, was clearly in an active status. See BUPERSMAN, article 1880140-2 and 5, which indicates that members of the Naval Reserve on active duty are members of the Ready Reserve which is an active status. Therefore, Captain Zimmerman should be given full credit (without prorating) for the 57 points he earned in the anniversary year ending June 30, 1961. See 34 Comp. Gen. 520, 521 (1955) (answer to question 2c) and 36 Comp. Gen. 498 (1957).

If Captain Zimmerman's service records are corrected to give him credit for the additional active service he claims in 1960 and 1961, his retired pay may then be computed based on 29 years of service rather than 28 years. However, without a determination in his favor on that matter, he still would not have sufficient service to entitle him to additional retired pay.



Acting Comptroller General
of the United States